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Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Term, 1972

ARCHIE PELTZMAN,

Petitioner,

-against-

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ARCHIE PELTZMAN
8725 16th Avenue
Brooklyn, New York 11214
Petitioner Pro Se

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IN THE
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NATIONAL LABOR RELATIONS BOARD,

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PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

The petitioner, Archie Peltzman, prays that a writ of certiorari be issued to review a final decree of the United States Circuit Court of Appeals for the Second Circuit entered on April 4, 1972 (Appendix A) granting the motion of the respondent, National Labor Relations Board (hereinafter called "Board"), for the dismissal of petitioner's motion for petition to review a decision of the Board, which refused to issue an unfair labor complaint against the American Radio Association and the

Central Gulf Steamship Co. for lack of jurisdiction. Petitioner's motions to adduce additional evidence and directing respondent to produce the record for review were denied on the same date (Appendix B & C). A petition for rehearing by petitioner was denied on April 24, 1972 (Appendix D).

OPINIONS BELOW

No opinion has been filed as of May 8, 1972.

JURISDICTION

The final decree of the United States Circuit Court of Appeals for the Second Circuit was entered on April 4, 1972. The rehearing was denied on April 24, 1972.

The jurisdiction of this Court is invoked under Section 1252 and 1254(1) of Title 28 U.S.C. and Section 10(e) and (f) of the National Labor Relations Act, July 5, 1935, C. 372 Sec. 10, 49 Stat. 453 (29 U.S.C.A. Section 160(e) and (f).

QUESTIONS PRESENTED

1. Does the Second Circuit Court of Appeals have jurisdiction to review a decision of the General Counsel of the National Labor Relations Board, who refused to issue an unfair labor practice complaint

against the American Radio Association, a union of Radio Officers, and the Central Gulf Steamship Co., the employer of the Complainant, after his appeal was denied and the case closed?

2. Does a private contract between the union and the Steamship Co. under a so-called union security clause, calling for dismissal from employment of a seaman from his job, unless he pays within thirty days from date demanded, an initiation fee, together with arrears of all dues and fees, required for acquiring union membership, supercede the provisions of Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), which prohibits anyone from demanding or receiving money from a seaman for providing him with employment, under a penalty of a misdemeaner, with a fine of 500 dollars or six months imprisonment?

3. Does the power of the National Labor Relations Board under Sec. 10(c) of the Act, to take such action "as will effectuate the policies of the Act," include the duty to give effect to all statutes, and to undertake the accomodation of one statutory scheme of Congress to another, without excessive emphasis upon its own immediate task?

4. Does the fifth, ninth, and fourteenth amendments of the United States Constitution protect a citizen from dismissal from his employment, irregardless of any private contract between and company and a union, which requires membership in good standing as a condition of employment?

5. Does a union have a right to automatically expel a union member for non-payment of dues without notifying him of his expulsion or giving him a hearing to explain his delinquency of dues?

Constitutional Provisions involved Constitution of the United States, Amendment V.

> "No person shall....nor be deprived of life, liberty or property, without due process of law."

Constitution of the United States, Amendment XIV, Sec. 1:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Amendment IX:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Statutes involved: Section 10(3) and (f) of the National Labor Relations Act, July 5, 1935 C. 372 Sec. 10, 49 Stat. 453 (29 U.S.C.A. Sections 160(e) and (f).

Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), Merchant Marine Act 1920 ....

"If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any renumeration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdeameanor and shall be imprisoned not more than six months or fined not more than $500.

STATEMENT OF FACTS

The petitioner, Archie Peltzman, joined the American Communications Association, the predecessor of the American Radio Association, in 1943 (Appendix K). He sailed in the Merchant Marine from October 1943 until June 1949, the date the United States Coast Guard refused to issue a Radio Officer's License to petitioner, claiming petitioner was either a member of the Communist Party or sympathetic to its principles.

It was not until August 1967 when petitioner received a Radio Officer's License from the United States Coast Guard, as a result of suing the Commandant of the Coast Guard in United States Federal Court (*Peltzman v. Smith*, C.A.N.Y. 404 F. 2d, 335) that petitioner resumed sailing again through the same union he had belonged to previously, which now called itself the American Radio Association.

When petitioner could no longer sail in the Merchant Marine due to United States Coast Guard refusal to issue a Radio Officer's license, his union gave him an inactive assignment slip dated March 17, 1950 (Appendix L) and the official explained that if he received his Radio Officer's License in the succeeding months, he would not have to pay a withdrawal fee (which amounted then to one year's dues), but only the dues for the intervening months from March 17, 1950 to date of receipt of Radio Officer's License and then in the event that more than a year elapsed he could apply for a withdrawal card from the union.

When petitioner applied for reinstatement to the union in December 1967, the official who gave him a permit card to sign, Mr. Bernard Smith, the Secretary-Treasurer, told him this was the procedure that old and new members had to go through in order to join or rejoin the union. Petitioner at that time, when he filled out the permit card, saw a line on the card which said initiation fee and told Mr. Smith, that he didn't think he should have to pay the initiation fee, but that he would pay a withdrawal fee. Mr. Smith replied that since petitioner would have to sail as a permit card member for one year, he would at that time talk about the initiation fee, and in the meantime petitioner would only have to pay the dues required from all members of the union.

After one year passed, the union demanded $2,000 from the petitioner as an initiation fee and petitioner refused to pay it, whereupon he was told that he would

no longer be able to sail from the Group 1 list but would lose seniority and be on the Group 2 list.

Whereupon petitioner wrote a letter pursuant to the regulations of the union to the American Merchant Marine Institute and asked them to arbitrate the dispute between the petitioner and the union.

After about three months time and no arrangements being made to arbitrate the dispute, petitioner complained to the National Labor Relations Board in 1969 that the union was discriminating in its hiring hall practices. Within about two weeks time, the Union called the petitioner and told him he would be put on the Group 1 list and a job was available. Whereupon, petitioner withdrew his complaint in August 1969 against the union and so advised the National Labor Relations Board and the American Merchant Marine Institute.

Petitioner filed an unfair labor practice complaint against the union on December 17, 1969, because the union still refused to reinstate him as a member, even though a year had elapsed and petitioner told the Secretary-Treasurer Mr. Smith that hundreds of seamen had been reinstated into their jobs and union membership under the *Parker v. Lester* decision 227 F. 2 708 (1955), without paying any fees except in some cases a small amount to keep their pension credits up to date.

On May 28, 1971, petitioner was given a letter on board the SS Green Ridge by an official of the union which demanded a

payment of an initiation fee of $2,000 dollars and all arrears in dues and fines, and in the event this was not paid, then the union would demand that the company discharge the petitioner (Appendix E, letter dated January 13, 1971).

On the same date the Captain of the Green Ridge handed petitioner a letter which said that the company would require a clearance slip from the union before it would rehire the petitioner (Appendix F, letter dated May 28, 1971).

Petitioner sued the union in New York State Supreme Court (*Peltzman v. American Radio Association*, 327 N.Y.S. 2d 505) sometime in July 1971, seeking reinstatement in the union, credit for pension from 1943 to 1949 and a writ of mandamus reinstating him to his permanent job as a Radio Officer on board the SS Green Ridge, the ship petitioner had sailed on for nine months and which he had left pursuant to union regulations, for a vacation of one trip off, on May 28, 1971. This suit is still being adjudicated as of this date, April 20, 1972 (Appendix G).

On or about September 7, 1971 the SS Green Ridge sailed without the petitioner because the union had refused him a clearance assignment after his vacation of one trip off and had sent to the company a union member to replace petitioner.

On September 14th the petitioner filed an unfair labor practice complaint (Appendixes I and J) against the union and the company, charging that the union had

caused his discharge from the SS Green Ridge, and that the company had acquiesed in that demand of the union to have petitioner replaced from his permanent job aboard the SS Green Ridge.

Also that same day petitioner filed a complaint with the National Labor Relations Board that the union sometime in June, 1971 had refused to register petitioner in the Radio School of the union, the excuse given him was that he had to start the school's classes in a beginners class and those classes were not available until the following year. Petitioner had asked to be registered in a Radar Class.

Those are the complaints that the General Counsel refused to issue when petitioner's appeals were denied (Appendixes I & J), and the cases closed. He filed a petition on January 27, 1972 with the Second Circuit Court of Appeals (Appendixes M and N, letter of Nov. 15, 1971) for a review of those decisions, which were denied on April 4, 1972. Rehearing was denied on April 24, 1972.

Petitioner alleges he was illegally expelled from the union, for non-payment of dues, because he had an inactive assignment slip when he was expelled. The date of the alleged expulsion was only 17 days after he received this inactive status assignment slip in March 17, 1950. Petitioner was never notified of this alleged expulsion until Mr. Altman of N.L.R.B. informed him of this date, and petitioner then asked who had testified as to the date, and if any documentary evidence was in the record.

Mr. Altman then replied that the records were confidential. It is petitioner's contention that this alleged date was in fact based on the inactive status slip which petitioner had supplied the N.L.R.B. when he made his charge of unfair labor practices, and the union then fixed his expulsion date as soon thereafter as possible, because they realized, after also noting that petitioner had stopped paying dues in May 1949 (Appendix K), that nine months had elapsed, and the union's rule was that a member who was in arrears for six months, was automatically expelled from the union. So this petitioner actually received an inactive assignment status slip three months after being automatically expelled from the union (Appendix L).

Petitioner asserts that since the union had never informed him that he had been expelled in 1950, for non-payment of dues, and petitioner considered the inactive status assignment slip a de facto withdrawal card, his alleged expulsion in 1950, was legally null and void, because of lack of procedural due process. Also that since his withdrawal from the union was involuntary (due to U.S. Coast Guard illegal denial of a Radio Officer's License in 1949). He was still a member under the definition of a member in 29 U.S.C.A. Sec. 412, 29 U.S.C. A. Sec. 402:

> "Member or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization and who neither has voluntarily withdrawn from membership, nor has

been expelled from membership after appropriate proceedings of the constitution and by laws of such organization."

REASONS FOR GRANTING THE WRIT

1. The petition should be granted because the United States Circuit Court of Appeals for the Second Circuit has decided an important question of Federal Law - namely, dismissing for lack of jurisdiction an appeal from an administrative agency, without the benefit of the record before it, only the conclusions of the agency, which conclusion was not based on cross examination of witnesses by opposing parties or a hearing. Petitioner's request to adduce additional evidence and also his motion to have the Board produce the record for review were also denied, depriving him of due process and equal treatment under the U.S. Constitution's 5th and 14th Amendments, and other unspecified rights under the 9th Amendment.

Further, the decision of this Federal question is in conflict with the Circuit Court of Appeals for App. D.C. In *Retail Clerk's Union, etc. v. NLRB*, (1965) 121 App. D.C. 140, 348 F. 2d 369, the Court held that:

> "Standing to appeal on administrative order as a person aggreived, under 29 U.S.C. Sec. 160(f) arises if there is in fact an adverse effect upon the party in question, the

Court pointing out that such standing does not require an injury cognizable at law or equity."

In *International Union, etc. v. Scofield* (1965), 382 W.S. 205, 15 L.ed.2d 272, 86 S. Ct. 373, this Court held that:

> "When the Board enters a final order against the charged party, it is clear that such a party is a person, aggrieved under Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160(f), and is therefore enabled to seek review in the appropriate Court of Appeals,"

the Court said, alternately pointing out that if the Board determines that a complaint should be dismissed, the charging party has a statutory right to review as the person aggrieved.

In *NLRB v Brown*, 380 U.S. 278, 13 L. 3d. 2d 839, 85 S. Ct. 980.

Sylabus 16 -

> "Even where the National Labor Relations Board is sustained, its analysis in support of its conclusion is subject to full, independent judicial review."

Sylabus 17 -

> "Although Courts should be slow to overturn an administrative decision, they are not left to sheer acceptance of the National Labor Relations Board's conclusions."

Sylabus 18 -

"Judicial review of administrative decisions deemed inconsistent with a statutory mandate or with the Congressional policy underlying a statute are not only properly within the judicial province, but courts would abdicate their responsibility if they did not review such administrative decisions."

Sylabus 20 -

"Where review of an administrative decision is not a question of fact, but of a judgment as to the proper balance to be struck between conflicting interests, the deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress."

Sylabus 21 -

"Courts must set aside National Labor Relations Board decisions which rest on an erroneous legal foundation."

In *Barlow v. Collins*, 397 U.S. 159, 25 L.ed. 2d 192, 90 S. Ct. 832.

Sylabus 5 -

"In determining whether agency action is reviewable, the United States

Supreme Court must decide if Congress has in express or implied terms precluded judicial review or committed the challenged action entirely to administrative discretion."

Sylabus 6 -

"With regard to judicial review of agency action, the role of the courts should be viewed hospitably where the question sought to be reviewed does not significantly engage the agency's expertise, where the only or principal dispute relates to the meaning of a statutory term, the controversy presents issues on which courts and not administrators, are relatively more expert."

Sylabus 10 -

"The right of judicial review of administrative action is ordinarily inferred where Congressional intent to protect the interests of the Class of which the plaintiff is a member can be found; in such cases, unless members of the protected class may have judicial review the statutory objective might not be realized."

See 1 ALR Fed. Labor Order - "Person Aggrieved," p. 551.

Synopsis - One is an aggrieved person under Sec. 10(f) if the NLRB order has an adverse effect on him, whether or not his injury is cognizable at law or in equity, a party is an aggrieved person where he is

one against whom the NLRB enters a final order, or he is the charging party under a complaint dismissed by the NLRB.

Either the party charging a violation of the National Labor Relations Act, or the party against whom the charge is made, may be a person aggrieved under Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160(f), depending upon what action is taken by the Board concerning the complaint and its effect upon such party.

In the Matter of the Petition of the NLRB for a writ of prohibition and for a writ of mandamus, 304 W.S. 486-501 (1938), the dissenting opinion of Mr. Justice Butler pointed out at page 497:

> "Precisely, the question is whether, on the facts here disclosed, the Court was without power to consider and decide upon the Corporation's application for an order directing the Board to certify and file a transcript of the record and restraining in the meantime any other action by it. The decision just announced answers affirmatively, and that is the basis on which the Court commands vacation of the order of the lower court and prohibits it from reviewing the order of the Board without first giving it a reasonable apportunity to vacate its order; that is, without giving the Board more time to proceed under Sec. 10(d). Obviously, jurisdiction of the Circuit Court of

Appeals attached upon the filing of the corporation's petition for review and service of a copy on the Board. Any other construction of Sec. 10(f) would let the Board by refusing to certify a transcript of proceedings before it, prevent judicial review of its orders. Congress did not so intend. While the statute expressly requires the person aggrieved to file a certified transcript, it implicitly, but not less plainly, commands the Board to certify the Record. This Court's decision rests on the statement that, as the term is to be applied in this instance, jurisdiction is the power to hear and determine the controversy presented in a given set of circumstances. If the lower Court had jurisdiction to entertain and decide the corporation's motion, writs of mandamus and prohibition may not be granted, for they are not available for correction of mere error or even abuse of discretion."

Interstate Commerce Commission v. New York, N.H. and H.R. Co., 287 U.S. 178, 203, 204, 77 L.ed.248, 259, 260, 53 S. Ct. 106; ex parte *Whitney*, 13 Pet. 404, 408, 10 L.ed., 221, 223; Ex parte *Taylor*, 14 How. 3, 13, 14 L.ed.302, 306, Ex parte *Denver & R.G.R. Co.*, 101 U.S. 711, 720, 25 L.ed.872, 875, *Re Hawkins*, 147 U.S. 486, 490, 37 L.ed.251, 252, 13 S. Ct. 512; *Re Atlantic City R. Co.*, 164 U.S. 633, 635, 41 L.ed.579, 580, 17 S. Ct. 208; *Re Pollitz*, 206 W.S. 323, 331, 51 L.ed.1081, 1083, 27 S. Ct. 729. Cf. Ex parte *Simons*, 247 U.S. 231, 240, 62 L.ed. 1094, 1096, 38 S. Ct. 497.

2. The decision is also probably in conflict with applicable decisions of Your Honorable Court in *Universal Camera Corp. v. NLRB*, 340 W.S. 47, 41, which is quoted in *Administrative Law*, University Case Book Series, by Gelhorn and Bok, on page 349, where Justice Frankfurter said ....

> "It would be mischievous word-playing, to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. The Senate Committee which reported the review clause of the Taft-Hartley Act expressly indicated that the two standards were to conform in this regard, and the wording of the two Acts is for purposes of judicial administration indentical, and so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by Courts reviewing every administrative action subject to the Administrative Procedure Act."
>
> On page 351 (*supra*) Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirements that evidence appear substantial when reviewed, on the record as a

> whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeal. The Board's findings are entitled to respect, but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses, or its informed judgment on matters within its special competence or both."

3. Petitioner argues that Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), which the Court had before it in the petitioner's reply pleading to support petition for review and cross motion to produce record for review, which law petitioner found after he had filed peition for review and this law specifically says ....

> "If any person shall demand or receive either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any renumeration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

If this statute is to be considered in relation to the Taft-Hartley Act, or any other Act, then the Board had the duty to undertake the accomodation of one statutory scheme of Congress to another without

excessive emphasis upon its own immediate task (*Southern Steamship Company, Petitioner v. National Labor Relations Board and National Maritime Union of America*, 316 U.S. 31-51 (1941).

> "The Maritime Law, when in conflict with the National Labor Relations Act, is supreme." (*Peninsular & O. S.S. Co. v. National Labor Relations Bd.*, CCA 5th, 98 F. 2d 411; *Texas Co. v. N.L.R.B.*, CCA 9th, 2d F. 2186.

Seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of articles, *National Labor Relations Bd. v. Waterman S.S. Corp.*, 309 U.S. 206, 218, 84 L. ed. 704, 711, 60 S. Ct. 493. *South Atlantic SS Co. v. National Labor Relations Bd.*, CCA 5th, 116 F. 2d 480, writ of centiorari denied in 313 U.S. 582, 85 L. ed. 1538, 615 Ct. 1101.

4. The National Labor Relations Board disregarded the intent of Congress as exemplified in Congressional Statutes protecting seamen, when it ruled that the Company had refused to rehire petitioner because of petitioner's refusal to pay the fees, pursuant to a valid union security clause between the company and the union, since Congress in Title 46 U.S.C. 599 41 Stat. 1006 Sec. 10(a) prohibits anyone from demanding money from a seaman for providing him with employment; and Title 46 U.S.C.A. Sec. 564, et seq. makes it mandatory for the Shipping Co. to make an individual contract with a seaman every time they sign new shipping articles after every foreign voyage (*Peninsular & O.S.S.*

Co. v. UNLRB, C.C.A. 5th, 98 F. 2, 411, 4, 151).

In *Hamilton v. U.S.*, 268 F. 151 cert. den. 254 U.S. 645 ....Both as "wards of the Admiralty" under the general maritime law and by special acts of Congress, applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

In *Brown v. National Union of Marine Cooks and Stewards*, reported in Court decisions - N.L.R.A. Vol. VII, p. 1070 (104 F. Supp. 685, d.e. cal.). The N.L.R.B. regional director instituted an action for injunctive relief under Sec. 10 (J) of the Labor Management Relations Act, 1947. As a result men who were screened off by the Coast Guard and other seamen who had optioned to join a rival union were reinstated to their jobs, notwithstanding the union's refusal to give these men assignment slips to these jobs. Answering the defense of the employer that the Contract provision obligated them to accept only men assigned to them by the union, Judge Lemmon decided that the employer may not take shelter under the contract if there be a showing of unfair practice, since it is the statute and not the contract which is the measure of duty, and the liability. (Appendix K, letter of September 1, 1971 from Central Gulf S.S. Co.).

In *Radio Officers Union of the Commercial Telegraphers Union, A.F.L. v. National Labor Relations Board*, 347 W.S. 17, 98 L.ed.455, 74 S. Ct. 323, 41 A.L.R. 2d 621,

the provisions of the National Labor Relations Act by which it is an unfair labor practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization (29 U.S.C. Sec. 158(a)(3), or for a union to cause or attempt to cause an employer to practice such discrimination (29 U.S.C. Sec. 158(b)(2), were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members or abstain from joining any union without imperiling their livlihood.

See Am. Jur. Labor Sec. 148, 149.

Sylabus 16 -

"In determining whether an employer is guilty of an unfair labor practice under Sec. 8(a) (3) of the Amended National Labor Relations Act (29 U.S.C. Sec. 158(a) (3) as a result of having discriminated against employees to encourage or discourage membership in a labor organization, the motivation of the employer in practicing the particular discrimination complained of is a relevant factor." (See Am. Jur. Labor, Sec. 148).

Sylabus 18 -

"At common law a man is held to intend the forseeable consequences of his conduct." (See Am. Jur. Evidence, Sec. 232).

A system of hiring which requires recourse only to a union for assignment to employment and restricts assignment to union members in good standing encourages membership in a labor organization. See *Red Star Express Lines v. N.L.R.B.*, C.A. 2d 196 F. 2d 78 (41 A.L.R. 2d 629).

Petitioner refers to Sec. 10(e) of A.P.A., and alleges that the NLRB action in dismissing the complaints are:

A. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

B. Contrary to constitutional right, power, privilege, or immunity;

C. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

D. Without observance of procedure required by law;

E. Unsupported by substantial evidence in a case subject to Section 556 & 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute.

Petitioner wishes to show by the citations of the following cases involving the American Radio Association, before the Board, that the previous decisions entered therein have not stopped the A.R.A. from continuing its unfair labor practices, and the illegal contract signed in 1949 still has the same clauses in it that was declared illegal in 1949, and therefore the contract

is still invalid because in effect and actual practice it is a closed shop practice, clearly illegal under the Taft-Hartley Act; but semantically called a union security clause in the contract. The hiring hall procedures are still discriminatory vis a vis non members, permit card members, and the employer has to apply to the union for manning his ships and has no right to hire or rehire anyone without a "clearance" assignment from the union.

1. In the *Matter of American Radio Association Affiliated with the Congress of Industrial Organization & Carl W. Lundquist & William Steinberg*, case No. 2-CB-88, decided April 19, 1949, 82 NLRB 1344, No. 151 -

Relating to a "closed shop" agreement and to a strike by the A.R.A. to force employers to sign such an agreement.

Decree consented to by American Radio Association in Docket No. 217 91 ([redacted]) U.S. Ct. of Appeals 2nd Circuit, Dec. 28, 1950.

2. A decree filed by *NLRB against A.R.A.*, Docket No. 24737 ([redacted]). Decree filed July 16, 1957.

The record in this case is not available in the published volumes of this Court. Enquiry to the New York Office and Washington Office of the NLRB, has to this date, May 8, 1972, been not forthcoming, so petitioner has no idea what this case is about.

3. *In the matter of Pacific Maritime Association, successor in interest to Pacific American Shipowners & Its member companies and Radio Officers Union Marine Division, Commercial Telegraphers Union AFL-CIO.* Case No. 20-CA- 166 - Decided April 28, 1950.89 NLRB No. 115.

In this case the American Radio Association intervened. Board ruled that contract signed after a strike contained illegal hiring hall procedures and closed-shop agreement.

4. *American Radio Association (Pacific Maritime Assoc.) Jack Hajim.* Case No. 20-CB-395 April 9, 1957, 117 NLRB No. 151.

Trial examiner ruled union was engaging in unfair labor practices, but the Board ruled to dismiss the complaint because it was filed six months after the illegal unfair practices were committed. (Note contains Senator Taft's statement about discriminatory hiring halls.)

5. *NLRB v. Alaska SS Co., et al (ARA),* 221 F2 357, Feb. 26, 1954.

Petition for enforcement for illegally participating in hiring arrangement for preferential treatment to union members. (Granted.)

6. *NLRB v. Alaska SS Co., et al. (American Radio Association),* 245 F2 282, May 22, 1957.

Enfocement of back pay order. (Granted.)

CONCLUSION

Petitioner therefore submits that the Second Circuit Court of Appeals erred in its dismissal of petitioner's petition for review, his motions to adduce additional evidence and for production of the record, and that the petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted,

ARCHIE PELTZMAN
8725 16th Avenue
Brooklyn, New York 11214
Petitioner Pro Se

APPENDIX A

U.S. Court of Appeals Order
Dated April 4, 1972 Granting
NLRB Motion To Dismiss
Petition for Review

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD)
HON. IRVING R. KAUFMAN) Circuit Judges

APPENDIX A

U.S. Court of Appeals Order
Dated April 4, 1972 Granting
NLRB Motion to Dismiss
Petition for Review

It is hereby ordered that the motion made herein by counsel for the respondent by notice of motion dated March 13, 1972, to dismiss the petition for review for lack of jurisdiction be and it hereby is granted.

s/ ADF

A. DANIEL FUSARO,
Clerk

APPENDIX A

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD)
HON. IRVING R. KAUFMAN) Circuit Judges

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

It is hereby ordered that the motion made herein by counsel for the petitioner by notice of motion dated March 20, 1972, to direct respondent to produce the record for review be and it hereby is denied.

s/ADF

A. DANIEL FUSARO, Clerk

APPENDIX C

U.S. Court of Appeals Order Dated April 4, 1972 Denying Motion of Petitioner for Leave to Adduce Additional Evidence

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD, HON. IRVING R. KAUFMAN } Circuit Judges

APPENDIX C

U.S. Court of Appeals Order Dated April 4, 1972 Denying Motion of Petitioner for Leave to Adduce Additional Evidence

It is hereby ordered that the motion made herein by counsel for the petitioner by notice of motion dated March 13, 1972 for leave to adduce additional evidence be and it hereby is denied.

s/ADF

A. DANIEL FUSARO, Clerk

APPENDIX D

U.S. Court of Appeals Order Dated April 24, 1972 Denying Petitioner's Motion for a Rehearing

UNITED STATES COURT OF APPEALS

Second Circuit

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

A petition for a rehearing having been filed herein by petitioner, pro se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

Dated: April 24, 1972

s/J. Edward Lumbard

s/Irving R. Kaufman

Circuit Judges

APPENDIX E

Letter Dated January 13, 1971
From American Radio Association

Affiliated with the American Federation of Labor and Congress of Industrial Organizations

AMERICAN RADIO ASSOCIATION

270 Madison Avenue · New York, N.Y. 10016 ·
MUrray Hill 9-5754 · Cable Address:
ARADIOCIO NEW YORK

January 13, 1971

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, N. Y. 11207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association, AFL-CIO and the Central Gulf Steamship Co., you are required as a condition of employment to become a member in good standing of this Organization.

Accordingly, within thirty (30) days from the date hereof, you are required to tender the sum of Two Thousand Dollars ($2,000.00), (together with arrears of all dues and fees, if any) as the initiation fee required for acquiring Union Membership.

APPENDIX E

Letter Dated January 13, 1971
From American Radio Association

If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,

s/Bernard L. Smith
Bernard L. Smith
Secretary-Treasurer

BLS:LB

Via REGISTERED R.R.R.

cc: SS GREEN RIDGE, c/o Wilmington Shipping Co., P.O. Box 1809, Wilmington, N.C. 28401 (AIR MAIL, REG.R.R.R.)

cc: Central Gulf S.S. Co., New Orleans, La.

SAN FRANCISCO BALTIMORE NEW ORLEANS SEATLE

HOUSTON

APPENDIX F

Letter from Central Gulf S.S. Co.
Dated May 28, 1971

CENTRAL GULF STEAMSHIP CORPORATION

Telephone 529-5461
Telex 050-7435
TWX 810-951-6044

Cable Address
Centraship

International Trade Mart -
P.C. Box 53365
No. 2 Canal Street
New Orleans, La. U.S.A. 70150

S.S. Green Ridge
New York, N.Y.
May 28, 1971

Mr. Archie Peltzman
Radio Officer

Dear Mr. Peltzman:

In accordance with your request I have ordered a replacement. Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly,

s/W.C. Kenopke
W.C. KENOPKE, MASTER
S.S. GREEN RIDGE

APPENDIX G

Order of New York Supreme Court, Special Term, Dated April 20, 1972, Denying Motion

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM, PART 1
COUNTY OF NEW YORK

ARCHIE PELTZMAN,

Plaintiff

-against-

AMERICAN RADIO ASSOCIATION, etc.,

Defendant

Index No.

Calendar No.

ORDER

Present:

Hon. Max Bloom
Justice.

The following papers numbered 1 to 9 used on this motion, submitted and referred this 13th day of April, 1972.
Calendar No._____

	Papers Numbered
Notice of Motion and Affidavits Annexed - exhibits	1-5
Order to Show Cause, Answering Affidavits and exhibit	6-7
Replying Affidavits and exhibit	8-9

APPENDIX G

Order of New York Supreme Court, Special Term, Dated April 20, 1972, Denying Motion

By order dated January 20, 1972, plaintiff's motion for a mandatory injunction was denied and defendant's motion to dismiss the complaint was granted (see opinion 327 N.Y.S., 2d 505). A motion for leave to reargue was thereafter denied. Plaintiff now moves for leave to rehear and renew (Riggs v. Pursell, 74 N.Y. 370), allegedly upon the basis of "new facts". All that is now advanced is the claim that "46 U.S.C.A. §599 bars the acts sought by the complaint to be restrained. A mere glance at the statute makes it at once apparent that it is utterly without application to the situation here presented. There is, therefore, no warrant for renewal or rehearing of the original determination. Accordingly, the motion is denied.

Dated, April 20, 1972

APPENDIX H

Letter from Central Gulf S.S. Co.
Dated September 11, 1971

CENTRAL GULF STEAMSHIP CORPORATION

Telephone 529-5461
Telex 058-7435
TWX 810-951-6044

Cable Address
Centraship

International Trade Mart
No. 2 Canal Street
New Orleans, La., U.S.A.
70130

September 1, 1971

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

This is in reply to your letter of August 17, 1971 requesting correspondence between this office and the A.R.A. in connection with your removal by the Union, from our SS Green Ridge.

We have never corresponded with the Union concerning your case. The New Orleans A.R.A. agent telephoned the writer to ascertain the itinerary of the vessel, a few days prior her arrival Bayonne.

After the vessel arrived Bayonne, A.R.A., New York informed the writer telephonically that you would have to be replaced until some details of your standing with the Union were resolved.

. Letter from Central Gulf S.S. Co.
Dated September 11, 1971

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surrounding the case, but to avoid our becoming involved in a breach of contract with A.R.A., the Master was instructed not to sign you on until you produced a clearance from the Union

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved, thus the reason for our routine wire notice to rejoin.

As you no doubt know, our contract with the A.R.A. prohibits our selecting or employing Radio Officers, they are assigned by the A.R.A. in accordance with their shipping rules.

Yours very truly,
CENTRAL GULF STEAMSHIP CORPORATION

s/C.E. Whitcomb

Captain C.E. Whitcomb
Manager Marine Personnel

CEW:dh
cc: Mr. G. A. Atkinson, N.Y.

APPENDIX I & J

Unfair Labor Charges Filed by
Petitioner Dated September 14, 1971

(REPRODUCED HEREIN AT

PAGE 16a.)

FORM NLRB 508 (10-48)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
AMERICAN RADIO ASSOCIATION	Mr. Bernard L. Smith	HU 9-5754

d. Address (Street, city, State and ZIP code)

270 Madison Avenue, New York, New York 10016

2. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1)(A) and (2) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

3. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about September 7, 1971 the above-named labor organization refused to give Archie Paltzman clearance papers from its hiring hall to resume his job with Central Gulf Steamship Corporation, because he was not a member of said Union.

On or about June 2, 1971, the above-named labor organization refused to permit Archie Paltzman to enroll in the industry radio school because of his lack of membership in said Union.

By these and other acts the above named Union has interfered with, restrained and coerced employees in the industry in the exercise of rights guaranteed in Section 7 of the Act.

4. Name of Employer

CENTRAL GULF STEAMSHIP CORPORATION

5. Location of Plant Involved (Street, city, State and ZIP code)

1 Whitehall Street, New York, New York 10016

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Shipping	Shipping by vessel	42

8. Full Name of Party Filing Charge

Archie Paltzman

9. Address of Party Filing Charge (Street, city, State and ZIP code)

8725 16th Avenue, Brooklyn, New York 11214

10. Telephone No.

CL 9-1218

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/Archie Paltzman
(Signature of representative or person making charge)

an individual
(Title or office, if any)

Archie Paltzman

Address 8725 16th Avenue, Brooklyn, New York 11214

CL 9-1218
(Telephone number)

September 14, 1971
(Date)

Form NLRB-501
(2-69)

Form Approved
Budget Bureau No. 64-R021.33

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: CENTRAL GULF STEAMSHIP CORPORATION

b. Number of Workers Employed: 42

c. Address of Establishment (Street and number, city, State, and ZIP code): 1 Whitehall Street, New York, New York

d. Employer Representative to Contact: Mr. Atkinson

e. Phone No.: WH 4-8250

f. Type of Establishment (Factory, mine, wholesaler, etc.): Shipping

g. Identify Principal Product or Service: Shipping by vessel

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about September 7, 1971, the above-named Employer discharged Archie Paltzman because he was not a member of American Radio Association.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Archie Paltzman

4a. Address (Street and number, city, State, and ZIP code): 8725 16th Avenue, Brooklyn, New York 11214

4b. Telephone No.: CL 9-1233

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

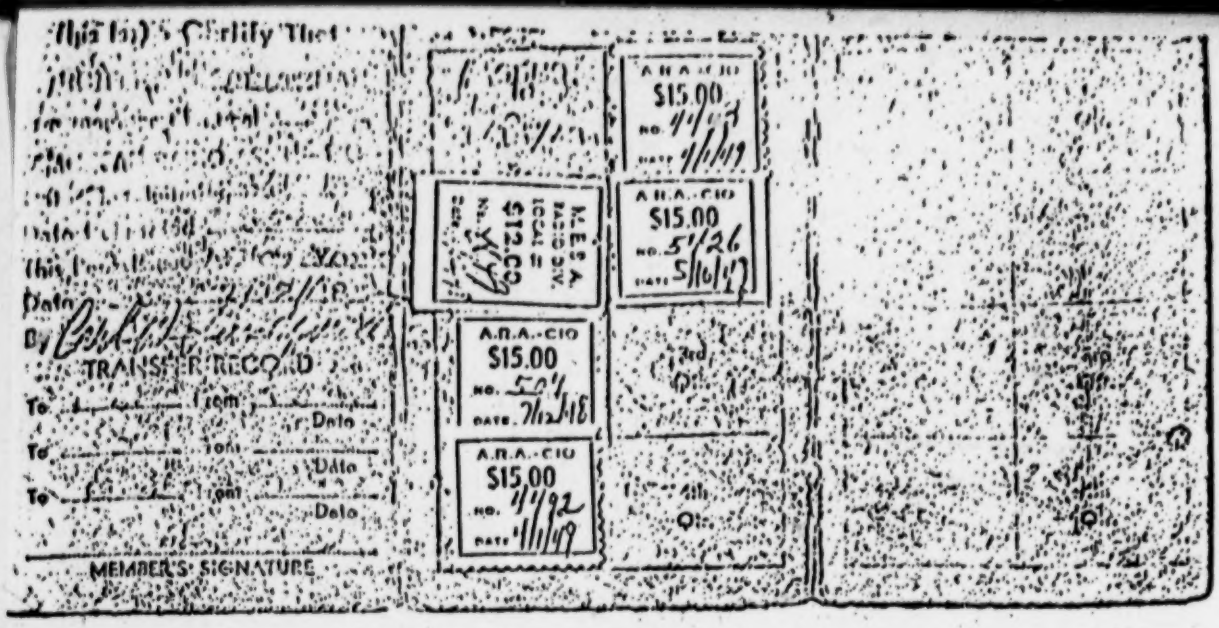
By: /s/ Archie Paltzman — an individual
(Signature of representative or person filing charge) (Title, if any)

Address: Archie Paltzman, 8725 16th Avenue, Brooklyn, New York 11214 — CL 9-1238 (Telephone number) — September 14, 1971 (Date)

APPENDIX K

Membership Book and Dues Record of Petitioner

(REPRODUCED HEREIN AT PAGE 18a.)



NATIONAL BOOK No. [illegible]

This is to certify that—

Archie L. Coltzman

(NAME OF MEMBER—PLEASE CLEARLY)

is a member of District Local No. V

AMERICAN COMMUNICATIONS ASSOCIATION, C.I.O.

Union Dispatcher

Archie L. Coltzman

(MEMBER'S SIGNATURE)

Note—This book is void unless signed by member and Local Secretary.

[illegible]

(SIGNATURE OF SECRETARY-TREASURER of Local to which member belongs)

LOCAL MEMBERSHIP BOOK No. .....

Date member first initiated ..... Y., 19 YY

Date member reinstated if membership not continuous ....., 19....

Date and place at which this book was issued ..... 5/26, 19 YY

..... NYC (CITY) .....

This book issued by

O Mantel

(SIGNATURE OF ISSUING OFFICER OR DELEGATE)

This Membership Book issued by the International Office of the American Communications Association, C.I.O. 5 Beekman Street, New York 7, N. Y.

412

Joseph P. Selly
President

APPENDIX L

Inactive Assignment Slip Dated March 17, 1950

ORIGINAL
(To be Retained by Member)

OFFICIAL ASSIGNMENT

Port of New York Date 3/17/50

Name Arabia Baltzman Book No. 284

Assigned to Boston Inactive from [illegible]

S.S. Company Rating

Perm. ☐ Temp. ☐ Relief Job ☐ Book [illegible]

Transferred to Cleared

Remarks



APPENDIX M

NLRB Letter Denying Appeal
Dated August 13, 1970

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570 August 13, 1970

Re: American Radio Association
(Grace Lines, et al.)
Case No. 2-CB-4788

LETTERS TO PARTIES FORWARDED
VIA CERTIFIED MAIL THIS DATE

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, New York 11207

Dear Mr. Peltzman:

Your appeal in the above matter has been duly considered.

The appeal is denied. Under all the circumstances, the burden of establishing that the American Radio Association unlawfully denied you reinstatement could not be sustained. The evidence disclosed that you had been expelled from the Association for non-payment of dues. Even assuming, without actually deciding, that you were on "inactive" status, such status did not privilege you to withhold dues and, therefore, it appeared that the Association validly expelled you, thus necessitating that you re-enter the Association as a new member. Accordingly,

APPENDIX M

NLRB Letter Denying Appeal
Dated August 13, 1970

absent any other contention on appeal, further proceedings were unwarranted.

Very truly yours,

Arnold Ordman
General Counsel

By s/Irving M. Herman
Irving M. Herman
Director, Office of Appeals

cc: Director, Region 2

American Radio Association
270 Madison Avenue
New York, New York 10016

Edwin A. Steinberg, Esquire
90 Park Avenue
New York, New York 10016

CERTIFIED MAIL

APPENDIX N

NLRB Letter Denying Appeal
Dated November 15, 1971

November 15, 1971

Re: Central Gulf Steamship Corp.
Case No. 2-CA-12445

American Radio Association
(Central Gulf Steamship Corp.)
Case No. 2-CB-5033

LETTERS TO PARTIES FORWARDED
VIA CERTIFIED MAIL THIS DATE
s/A.J.

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

Your appeal in the above matters has been duly considered.

The appeal is denied. For substantially the reasons set forth in the Regional Director's letters of October 26, 1971, and under all the circumstances, insufficient basis existed for a finding that either the Company or the Association had violated the Act in any manner encompassed by the charges. It was noted that on August 13, 1970, in sustaining the Regional Director's dismissal of your charge in Case No. 2-CB-4788, the General Counsel did not find

APPENDIX N

NLRB Letter Denying Appeal
Dated November 15, 1971

your expulsion from the Association to be violative of the Act.

Very truly yours,

Peter G. Nash
General Counsel

By s/Irving M. Herman
Irving M. Herman
Director, Office of
Appeals

cc: Director, Region 2

American Radio Association, AFL-CIO, 270 Madison Avenue, New York, New York 10016

Central Gulf Steamship Corporation, Attn: Mr. George Atkinson, Ass't. Tr. Mgr., One Whitehall Street, New York, New York 10016

Edwin A. Steinberg, Esq., 90 Park Avenue, New York, N.Y. 10016

Lorenz, Finn, Giardino & Lambos, Attn: Jacob Silverman, Esq., 21 West Street, New York, New York 10006

CERTIFIED MAIL

DEC 07 1971